

HOUSE FINANCE COMMITTEE

March 14, 2022

1:30 p.m.

[1:30:18 PM](#)

CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 1:30 p.m.

MEMBERS PRESENT

Representative Kelly Merrick, Co-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Bryce Edgmon
Representative Bart LeBon
Representative Steve Thompson (via teleconference)
Representative Adam Wool

MEMBERS ABSENT

Representative Neal Foster, Co-Chair
Representative DeLena Johnson
Representative Andy Josephson
Representative Sara Rasmussen

ALSO PRESENT

Kerry Crocker, Staff, Speaker Louise Stutes; Alexei Painter, Director, Legislative Finance Division; Neil Steininger, Director, Office of Management and Budget, Office of the Governor.

SUMMARY

HB 322 AK MARINE HWY SYSTEM VESSEL REPL. FUND

HB 322 was HEARD and HELD in committee for further consideration.

HB 395 FUNDS: AK MARINE HWY SYSTEM

HB 395 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the agenda for the meeting.

#hb322

HOUSE BILL NO. 322

"An Act relating to the Alaska marine highway system vessel replacement fund; and providing for an effective date."

1:30:42 PM

Co-Chair Merrick invited the testifiers to the table.

1:30:56 PM

KERRY CROCKER, STAFF, SPEAKER LOUISE STUTES, reviewed the purpose of the bill. He read a portion of the sponsor statement (copy on file):

House Bill 322 would protect the Alaska Marine Highway System (AMHS) Fund and Vessel Replacement Fund from the constitutional sweep under Article IX, section 17(d) of the Alaska Constitution.

Funds subject to the sweep must be both available for appropriation and reside in the General Fund. In *Alaska Federation of Natives v. Dunleavy*—the 2021 case in which the Superior Court determined the Power Cost Equalization Endowment Fund is not sweepable under the State Constitution—the court considered the state treasury to be distinct from the General Fund. Thus, by establishing the System Fund and Vessel Replacement Fund as a separate funds in the state treasury rather than in the General Fund, it is not subject to the sweep.

On-going, crucial state services such as the Marine Highway System should not suffer the destabilizing effects that result from the sweep of funds. HB 322 will shield the AMHS System Fund and Vessel Replacement Fund from the sweep and reinforce the Legislature's authority to assess for itself the prudence of appropriations.

Mr. Crocker continued to discuss the benefits of the legislation. He stated that AMHS warranted continued support from the state because it was an essential part of the transportation system. It benefited many communities throughout the state by enabling communities to maintain receipts, operated in a manner that enhanced performance, and allowed spending of the generated revenue.

Co-Chair Merrick indicated Representative Thompson had joined the meeting online and Representative LeBon joined the meeting in room.

Mr. Crocker stated that it was important to note that with the recent creation of the Alaska Marine Highway Operations Board (AMHOB), if the marine highway was allowed to maintain its receipts and was not sweepable, it would allow for a baseline of funding for the next 7 to 10 years.

[1:33:57 PM](#)

Representative LeBon asked how the fund would be accessed for spending.

Mr. Crocker replied that the fund had to be appropriated by the legislature in order to be spent.

Representative LeBon asked if the commissioner would have direct authority to spend from the fund.

Mr. Crocker deferred to Mr. Painter from the Legislative Finance Division.

[1:34:52 PM](#)

ALEXEI PAINTER, DIRECTOR, LEGISLATIVE FINANCE DIVISION, responded that the commissioner currently did not have spending authority. He explained that the legislature would need to appropriate the funds to the Department of Transportation and Public Facilities (DOT) to allow for the funds to be spent.

Representative LeBon shared his understanding that for the commissioner to be able to spend money from the fund, the legislature had to move money into the commissioner's control or authority. He asked whether the legislature would be expected to put "sidebars" on the ways in which the money could be spent.

Mr. Painter relayed that Alaska's Constitution stated that no money may leave the treasury without an appropriation. The money first needed to have been appropriated to DOT, and then the reason for the appropriation could be specified.

Representative LeBon asked if specific intent language would be needed. He questioned whether the commissioner would be permitted to spend the money however they saw fit if the money was moved from the AMHS capital improvement fund into DOT.

Mr. Painter indicated that if the funding was appropriated to AMHS, it could only be spent on AMHS related matters. However, if funds were appropriated to the commissioner's office, the commissioner could do whatever they wanted with the funds. Appropriating the funds for the purpose of the marine highway would limit the use of the funds.

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Representative Carpenter asked if there was anything preventing the legislature from creating a multi-year appropriation with the funds currently on hand.

Mr. Painter responded no, and if a multi-year appropriation was created for the current fund, problems with the sweep would be avoided.

Co-Chair Merrick indicated Representative Carpenter and Vice-Chair Ortiz had joined the meeting.

Co-Chair Merrick invited Mr. Steininger with the Office of Management and Budget (OMB) to speak to the fiscal note.

1:37:54 PM

AT EASE

1:38:27 PM

RECONVENED

Co-Chair Merrick indicated the committee would review the fiscal note at the bill's next hearing.

HB 322 was HEARD and HELD in committee for further consideration.

1:38:49 PM

AT EASE

1:39:51 PM

RECONVENED

Co-Chair Merrick invited Mr. Steininger with OMB to the table.

#hb395

HOUSE BILL NO. 395

"An Act relating to the Alaska marine highway system fund and the Alaska marine highway system vessel replacement fund; establishing the Alaska marine highway system fund and the Alaska marine highway system vessel replacement fund outside the general fund; authorizing the commissioner of transportation and public facilities to expend money from the Alaska marine highway system fund and the Alaska marine highway system vessel replacement fund; and providing for an effective date."

1:40:08 PM

NEIL STEININGER, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, introduced HB 395 and explained that it removed the Alaska Marine Highway System (AMHS) fund from being subject to the Constitutional Budget Reserve (CBR) sweep provisions of the constitution. The first way the bill addressed the applicability of the sweep to the AMHS was by removing the AMHS fund and the vessel replacement fund from the general fund and into its own external fund. This was to address the first test of "sweepability," which was tested whether a fund or account was part of the general fund. Second, the bill allowed for expenditures from the AMHS fund without further appropriation. This was to ensure that the AMHS fund and the vessel replacement fund also met the second test of sweepability, which tested whether funds were available for appropriation. It was important to safeguard the structural stability of the fund so that, if one of the tests were interpreted differently in the future, the fund would still meet the other test. Ensuring this stability was key because the funds were constructed to allow AMHS to operate into the future.

Mr. Steininger emphasized that the state had a financial opportunity to utilize significant federal funding that would allow the continuation of AMHS, and would allow the state to save farebox recovery funds earned by AMHS for future use. If the AMHS fund was subject to the CBR sweep, it would be more difficult to rely on the farebox recovery receipts in five years should the federal program expire. He stressed that utmost security of the AMHS operating plan was important to avoid problems like this and the administration envisioned providing that stability in future years.

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Representative LeBon shared his understanding that the deposited money generated by AMHS would be placed into a designated account. He wondered what he should call the account.

Mr. Steininger responded that it should be called a fund or an account. He explained that designated general funds in the state budget referred to flows of revenue made by statute into a fund. He stated that the AMHS fund was structured in this manner. The farebox recovery funds flowed into the fund, which were then appropriated by the legislature. The bill restructured the system and required that, rather than revenues automatically flowing into the fund, revenues needed to be appropriated by the legislature into the fund. This was because the constitution included a designated funds clause specifying that no state revenue was dedicated for an exact purpose. Therefore, the money would not flow automatically into the fund because it required that the commissioner could not spend without further appropriation. In order to ensure the fund was set up legally, either the money that flowed into the fund needed to receive appropriation, or the money that flowed out of the fund needed to receive legislative appropriation. It defined when the money was considered to have been spent for purposes of the state budget. Under the bill, the money was considered spent at the time it was transferred into the fund.

Representative LeBon asked a clarifying question about the different account and the means to remove money from the fund.

Mr. Steininger referred to Section 2 of the bill, which illustrated the way in which money would leave the fund. The legislature appropriated the farebox recovery revenue into the fund, then the commissioner of DOT expended from the fund without further appropriation. However, there would be certain boundaries and rules. The funds would still be subject to the program and financial review provisions of the budget, which required transparency to the public, understanding by the legislature, and continued fiscal constraint in the operations of AMHS. The commissioner of AMHS would also submit the management plan budget to OMB, which dictated the proposed fund designation for the following fiscal year. The commissioner was also required to submit change records to OMB during the governor's budget production cycle and speak to the change records and the operational plan during the committee process with the legislature. While it was an expenditure with additional appropriation, it would still appear in the budget under the "other" funds category rather than designated general funds. Other state entities that operated off large funds functioned in a similar way. For example, the Alaska Gasline Development Corporation (AGDC) and the eligibility for the Permanent Fund Dividend (PFD) operated under the same rules.

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Representative LeBon suggested that the final decision on how the AMHS money was spent was made by either OMB, the DOT commissioner, or in partnership with both entities to ensure the money was spent in a way that had been established in law. He asked for clarification and noted sidebars were put into place.

Mr. Steininger agreed and added that the decision was made through partnership with the legislature. He noted that the bill specified the operating function that was allowed to be used from the fund. There were specific boundaries that dictated the ways in which the money was spent. It also required that the spending be in accordance with the plan submitted through the standard budget process. Ultimately, the requirements included in the budget reports acted as further restrictions on the potential allocations of the money. It required coordination from all entities regarding the operational plan. He emphasized that there was still room for input from the legislature, however that point in the process was not when the funds would be considered

expended. The money was considered spent when it was deposited into the funds for fund capitalization.

Representative LeBon supported the intent of the legislation. However, he expressed concerns about checks and balances not being in place.

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Vice-Chair Ortiz supported the notion of trying to protect two funds from being deemed sweepable. He referred to Section 2 of HB 395, which outlined how the money would be used. He asked if the funds had been used properly in the past and whether the bill changed the ways in which the funds were used in the past.

Mr. Steininger responded that the intent was not to change how the funds were used in terms of the operation of AMHS. He clarified that it intended to mimic how the funds were currently used for operation of AMHS. There was no intent to expand the use of AMHS funds.

Vice-Chair Ortiz wondered why the added language was necessary. He thought it looked as though the bill was granting greater authority to OMB or to the DOT commissioner. He asked whether the same parameters were a product of the previous funds as the funds were constructed.

Mr. Steininger responded that the fund was currently constructed as a designated fund and followed the designated uses already in statute that allowed for guidance through the legislature. He reiterated that it was attempting to mimic those designations, but treated the designations as legal boundaries on potential recommendations the commissioner made for the funds. It was slightly more restricted because the designation that would be given to the legislature was a suggestion. While the legislature always maintained the power to appropriate and could take money from the fund, the commissioner would not be able to do that and would be constrained to specific purposes.

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Vice-Chair Ortiz noted that the history of the fund dated back before the creation of AMHOB. He wondered if the bill

recognized the creation of the new board and the nature of the board. He asked whether the board as it was constructed had any say in appropriation or use of resources.

Mr. Steininger replied that the intention of the bill was simply to fix the discrete problem of sweepability and the resulting long-term impacts. There was no intention to curtail any energy or enthusiasm about AMHOB. The bill intended to ensure that there would still be money available should federal funding expire. It provided some security for current and ongoing discussions.

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Vice-Chair Ortiz reiterated he supported the intent of the bill. He wondered what would prevent the construction of a bill that strictly addressed the sweepability of the funds and not the appropriation process. If the goal was simply to make the fund unsweepable, it made sense to focus the intent of the bill.

Mr. Steininger reiterated that there were two tests that determined whether funds were available for appropriation: whether a fund was in the general fund, and whether a fund was available for appropriation. The determination of sweepability was simply a statute that said a fund was outside the general fund. He explained that was a very recent change in the determination of sweepability and came out of a superior court decision. However, superior court decisions were not binding. The non-binding decision was not a strong enough foundation to build the fund that was required for the operations of AMHS. The intent was to ensure that AMHS would remain outside of the bounds of sweepability. If a fund was validly appropriated by the legislature in the past without further appropriation, then those funds would not be deemed sweepable because the funds were accessible without further appropriation. Every fund was set up a little differently, but the intent was to ensure that the funds met the tests that determined whether the funds were available for appropriation.

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Representative LeBon relayed his understanding that if money flowed into a designated account, then it would be considered part of the general fund for the duration of the time the money was in the designated account. Additionally,

if the legislature appropriated money out of the designated account into another account, it would no longer be subject to appropriation by the legislature and would be under the control of the commissioner as outlined in Section 2 of the bill. The state would be transferring the ability to spend the money to the DOT commissioner, OMB, or another agency in order to protect it from being swept back into the CBR. He asked if he had made a true statement.

Mr. Steininger responded that he was correct.

[2:00:56 PM](#)

Representative Carpenter provided a scenario where the legislature appropriated money into the AMHS fund. He asked whether the legislature would have the ability to remove the money from the fund in the future if it chose to do so.

Mr. Steininger responded in the affirmative and explained that the money could be reappropriated if it had not been expended.

Representative Carpenter asked what was stopping the legislature from appropriating a sum of money into AMHS fund that would cover the operations of the department for several years in the future.

Mr. Steininger indicated it would simply increase the balance of the fund and it would still be subject to the sweep. The legislature would be able to deposit a large sum of money into the fund for that purpose if the bill passed.

Representative Carpenter thought the constitution should be changed rather than skirting requirements as set forth in the constitution.

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Representative LeBon asked if the same logic could be attached to the Alaska Performance Scholarship and other higher education funds. He wondered whether the sweepability requirement would be removed if money was appropriated out of the higher education funds and into a student loan corporation fund.

Mr. Steininger responded that if a fund was established that was spendable by a corporation without further

appropriation, the structure would look similar to the structure of AMHS funds. It was effectively a savings account that required further appropriation by the legislature.

Representative LeBon suggested that if the state was protecting the AMHS vessel replacement fund, then the legislature should appropriate a balance out of that account into the "sub-account" to disqualify it from sweepability. He thought the process should be done on a yearly basis as money flowed into the account to protect the monies from the reverse sweep. The higher education fund balance had built up since the fund's inception; therefore, the legislature would have to transfer all the money into something like a student loan program in order to protect it.

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Mr. Steininger thought Representative LeBon described the issue accurately. If the bill passed, the legislature would be required on an annual basis to appropriate the farebox recovery revenues and any other desired funds into the AMHS fund to continue capitalizing upon it. The higher education fund was different because the AMHS fund consisted of funds generated by AMHS activity. The ability to save revenues to support future activities was an important aspect of the process. He explained that the balance in the higher education fund was not tied to the operations of the scholarship. He relayed that AMHS was set up differently and was examined more closely to ensure that AMHS could continue to rely on the fund to operate, whereas the scholarships would continue to be supported by the unrestricted general fund.

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Representative Carpenter thought it would be more accurate to say that if the farebox recovery funds were intended to be spent by AMHS, an appropriation would have to be made. He pointed out that AMHS did not have to conduct operations off of the specific funds. He highlighted that the legislature could make a multiyear appropriation of any sum from any account into the AMHS fund.

Mr. Steininger responded in the affirmative. The legislature would always retain the ability to redivert the

farebox recovery funds as they were state general revenues coming into the state. It was up to each legislature to determine how to use the revenues.

Representative Carpenter shared his understanding that a legislature was able to appropriate a sum of money into the AMHS fund, which would eliminate the need for the following legislature to appropriate additional money into the fund to forward-fund the account.

Mr. Steininger responded, "Yes." It would be similar to the way in which the higher education fund had been forward funded in the past. The legislature had the opportunity to place a larger balance in the supported operations for a longer period. A similar mechanism could be utilized if AMHS was removed from subjectivity to the sweep.

Co-Chair Merrick asked Mr. Steininger to review the fiscal notes.

Mr. Steininger responded in the positive.

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AT EASE

[2:11:14 PM](#)

RECONVENED

Mr. Steininger reviewed FN 1 with the control code aFote. He explained that it referred to OMB component 3064 and was a supplemental fiscal note for \$18.5 million. It consisted of a supplemental fund capitalization from the general fund to the vessel replacement fund. It would reconstitute the amount that was swept from the vessel replacement fund back into the fund under the new construction that made the money not subject to the sweep.

Mr. Steininger continued to FN 2 with the control code XGaKs. It referred to OMB component 3122 and would cost \$53.3 million in FY 23 and \$53.4 million in FY 22. He explained that the fund capitalizations from FY 22 and FY 23 farebox recovery would go to the AMHS fund.

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Mr. Steininger continued to FN 3 with the control code sCmtQ. It referred to OMB component 2604 which reflected a

fund change for an amount currently included in the FY 23 budget. He reported that \$5 million of the AMHS fund in FY 23 would be utilized to cover costs that would be unallowable under the new rural ferry system program that resulted from the [federal] Infrastructure Investment and Jobs Act. This would change the fund source on the appropriation from the current AMHS designated general fund to what would be a new fund code for the other funds. He explained that this represented the duplicated spending out of the AMHS fund. The bill would require deposits into the funds appropriated in the fund capitalization section and the operating budget for DOT would include a tracking code that showed how the administration intended to use the funds.

Co-Chair Merrick invited Mr. Painter to the table to discuss the significant differences between HB 322 and HB 395.

2:14:36 PM

ALEXEI PAINTER, DIRECTOR, LEGISLATIVE FINANCE DIVISION, spoke of the differences between HB 322 and HB 395. He explained that the two bills took two different approaches to solve the same problem, which was the sweepability of the AMHS fund. He echoed Mr. Steininger's comments that there were two tests to determine sweepability. The first test, which was to determine whether the fund was in the general fund, was addressed by both bills. He explained that both bills addressed it in a functionally similar way: HB 322 addressed it by moving the AMHS fund outside of the general fund and into the state treasury, and HB 395 simply dictated that the AMHS fund was outside of the general fund and did not establish it in the treasury. For a fund to be sweepable, however, a fund had to satisfy both tests. He noted that HB 322 did not address the second test, which was whether the funds were available for appropriation, while HB 395 did address it by making the fund available to DOT to spend without further appropriation. It essentially provided additional flexibility to DOT to determine the amounts that were spent each year rather than that responsibility being subject to the legislature's power. He surmised that HB 395 was stronger in terms of protecting the sweep because it allowed the fund to be spent without further appropriation. Conversely, it gave up some legislative control by allowing the commissioner to spend without appropriations given by the legislature. There was

nothing in HB 395 that would prevent the farebox recovery funds to be spent all in one year. He noted that was not the plan, but that it would be possible.

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Representative LeBon thought a form of checks and balances would be the annual appropriation that the legislature needed to make to prevent the money from being swept. He offered that if any "bad behavior" was uncovered during the prior fiscal year, the legislature would be asked every year to move money from the designated account to protect it from the future sweep. He asked whether his understanding was correct.

Mr. Painter responded in the affirmative, and added that if the legislature was unhappy with the administration's use of the fund, the legislature could refrain from placing money into the fund the following year.

Co-Chair Merrick concluded the agenda for the meeting.

HB 395 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

[2:19:07 PM](#)

The meeting was adjourned at 2:19 p.m.